IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

WP(C).No. 11495 of 2007(R)

PETITIONER:

DR.T.ABDUL RASHEED, MBBS, MD, D.G.O.,
S/O.P.M.MOHAMMED, BUILDING NO.IX/405,
KARIMBAM P.O., TALIPARAMBA-670 142.

BY ADV. SRI.M.M.ABDUL AZIZ
SRI.M.A.ABDUL HAKHIM
SRI.JYOTHISH.J.KALLINGAL

RESPONDENTS:

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1. ENVIRONMENTAL ENGINEER,
KERALA STATE POLLUTION CONTROL BOARD,
DISTRICT OFFICE, SOUTH BAZAR ROAD, PAYYANNUR-
673 307.

2. TALIPARAMBA MUNICIPALITY,
TALIPARAMBA REPRESENTED BY ITS SECRETARY.

3. HEALTH STANDING COMMITTEE,
TALIPARAMBA MUNICIPALITY, TALIPARAMBA REPRESENTED
BY ITS CHAIRMAN.

4. TALIPARAMBA CO-OPERATIVE HOSPITAL,
TALIPARAMBA REPRESENTED BY ITS GENERAL MANAGER.

5. GOVERNMENT HOSPITAL, TALIPARAMBA
REPRESENTED BY THE DISTRICT COLLECTOR,
KANNUR.

BY ADV.SRI.CHANDRAMOHANDAS, SC. PCB
SRI.P.NARAYANAN
SRI.M.P.ASHOK KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 11495 OF 2007 R

Dated this the 2nd July, 2007

JUDGMENT

Petitioner has approached this court with the following prayers:"

"a) Issue a writ of mandamus or such other writ, order or direction compelling respondents 4 & 5 to construct effluent treatment plant for treating the effluent generated in their hospital for safe disposal as required in Ext.P9.

b) Issue a writ of mandamus or such other writ, order or direction compelling respondents 1 & 2 to take action against respondents 4 & 5 for the pollution of the water in the well of the petitioner in his residential compound of 30 cents in Ward No.9 of Taliparamba Municipality mentioned in Exts.P1 to P9 and to prevent respondents 4 & 5 from polluting the water in the well of the petitioner in his residential compound of 30 cents in Ward No.9 of Taliparamba Municipality mentioned in Exts.P1 to P9.

c) Issue a writ of mandamus or such other writ, order or direction compelling respondents 4 & 5 to construct water tight concrete sceptic tank for the storage of hospital effluent and other waste from the hospitals and for preventing the pollution of water in the well of the petitioner in his residential compound of 30 cents in Ward No.9 of Taliparamba Municipality mentioned in Exts.P1 to P9."

2. Case of the petitioner, in brief, is as follows:

He is a Gynecologist working at Taliparamba. He is residing with his family and the drinking water is derived from a well maintained by him adjacent to his residential building. Potable water free from pollution was available till the fourth respondent Hospital was established fifty metres away from his residential compound. The fourth respondent has constructed a large tank on its side for collection and deposit of hospital rejections and effluents. It is stated that the Pollution Control Board directed respondents 4 & 5 to construct effluent treatment plant. Fifth respondent is a Government Hospital. Complaint is

levelled against fifth respondent also.

3. A Statement has been filed on behalf of the Pollution Control Board, inter alia, stating that the fourth respondent is a ninety bedded hospital situated about 42 metres away from the well of the petitioner. It is stated further that the Hospital constructed a Sewage Treatment Plant in their premises consisting of collection tank, aeration tank, clarifier, activator and pressure sand filters. As the tanks constructed are underground and covered with slabs, it could not be verified whether those tanks are plastered inside. It is stated that the fifth respondent Government Hospital is also situated nearby with 159 beds. The Hospital had only sceptic tank and soak pit arrangement for treating the sewage generator. It is also stated that the Analysis Report reveals that the total coliform exceeds the standards prescribed for drinking water. Dissolved Oxygen of the water is also very low. It is categorically stated that due to Bacteriological contamination, the well water is not potable. It is stated that the existing Sewage Treatment Plant was

installed after giving certain directions by the Pollution Control Board. The Sewage Treatment Plant of the fourth respondent is not adequate, and the fifth respondent has not installed any Sewage Treatment Plant except the existing sceptic tank. It is further stated that respondents 4 and 5 are bound to construct adequate Sewage Treatment Plant for treating the sewage generated.

4. I heard the learned counsel appearing for the parties. Counsel for fourth respondent would submit that they have put up an effluent treatment plant and they are also shifting from the present location within three months. Counsel for petitioner, however, would point out that the fourth respondent cannot escape from the liability to remove the filth before they shift. What is in issue is the right of the petitioner to get potable water. Apparently, it does not require much imagination to hold that right to safe potable water is a precious right and it cannot be denied by any person by polluting the water. Ext.P7 would show that there is a direction issued by the Environmental

Engineer to the fifth respondent to apply and obtain consent for treating the effluent generated from the hospital. It is clear from the Statement filed that the fifth respondent has been directed to construct Sewage Treatment Plant on 17.5.2004. The fifth respondent also cannot claim any special rights. In such circumstances, the Writ Petition is disposed of as follows:

I record the submission of the counsel for the fourth respondent that the fourth respondent will remove the entire waste. There will be a direction to the first respondent to see that the fourth respondent is compelled to remove the entire waste which is a creation of the fourth respondent. First respondent will take all its powers under law to see that the fourth respondent removes the entire wastes. Of course, it is the duty of the first respondent to see that there is no further pollution. Even after the fourth respondent vacates, if there is pollution, it may be brought to the notice of the first respondent. As far as the fifth respondent is concerned, the first respondent will proceed against the fifth respondent also in accordance with

law. If it is found that the fifth respondent is not acting as required of it, the first respondent will see that there is no pollution committed by the fifth respondent.

K. M. JOSEPH, JUDGE

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